ALTS
Association for Local Telecommunications Services

DOCKET FILE COPY ORIGINAL

June 10, 1997

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Application of Ameritech Michigan, Pursuant to Section 271 of the Telecommunications Act of 1996, to provide in-region interLATA services in Michigan; CC Docket No. 97-137

Dear Mr. Caton:

Enclosed herewith for filing are the original and five (5) copies of ALTS' Motion to Dismiss regarding the above-referenced docket. Pursuant to the Commission's request, ALTS is also submitting by separate cover a 3.5 inch diskette using WordPerfect 5.1 software, containing our enclosed comments.

Please acknowledge receipt by affixing an appropriate notation on the copy of the ALTS Motion furnished for such purpose and remit same to the bearer.

Sincerely yours,

Richard J. Metzger
General Counsel

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Application by Ameritech Michigan	)	
Pursuant to Section 271 of the	)	CC Docket No. 97-137
Telecommunications Act of 1996 to	)	
Provide In-Region, InterLATA	)	
Services in Michigan	)	

MOTION TO DISMISS BY THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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June 10, 1997

SUMMARY

Ameritech's current Section 271 application for interLATA authority in Michigan -- its third in five months -- again reveals a hopelessly itchy trigger finger. While Ameritech has finally cured the confusion about which of its interconnection agreements have actually been approved by the Michigan Public Service Commission ("MPSC"), its present application remains fatally flawed in numerous significant aspects:

- Ameritech has plainly failed to implement OSS for unbundled network element-based CLECs such as Brooks Fiber in a fashion that provides them "with a meaningful opportunity to compete" (Local Competition Order at ¶ 315). Indeed, Ameritech has not even reached agreement with Brooks as to how Ameritech's performance on this important checklist item should be measured.[1] As the MPSC concludes in its own comments (at 26): "The primary problem in assessing Ameritech's compliance with the nondiscrimination standards of the Act and specifically the OSS functions is that, for the most part, sufficient performance standards do not exist by which Ameritech's performance can be judged."

- Ameritech has not implemented unbundled switching, one of the items on the competitive checklist. Ameritech claims it can meet the compliance standard for such unrequested items that were announced by DOJ in its "Oklahoma" evaluation because the AT&T and Sprint agreements contain prices for this item. However, the AT&T agreement included with Ameritech's application contains no such prices, and the MPSC declined to approve the unbundled prices included in the Sprint agreement under Sections 251 and 252 of the 1996 Act. Consequently, Ameritech cannot meet the "Oklahoma" test for compliance for this unrequested checklist item.

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[1] See Brooks Comments filed June 10, 1997, in this docket at 12: "Ameritech has failed to provide the foundation on which adequate provisioning and maintenance of access and interconnection depend -- a functioning OSS system with adequate capacity and a track record of reliable operation, as measured by stable, precise and adequate performance standards."

- Not all the prices in the interconnection agreements relied upon by Ameritech have been verified by the MPSC as complying with the costing rules of the 1996 Act. Until such prices are ultimately determined by the MPSC, Ameritech has no way to assure the Commission that those prices will be fully consistent with the pro-competitive requirements of Section 271.

- Ameritech continues to defy an order of the MPSC that requires Ameritech to provide 100 percent intraLATA dialing parity in Michigan. The public interest requirement of Section 271 precludes Ameritech from even filing a Section 271 application until it comes into compliance with all such pro-competitive state agency orders.

ALTS is moving to dismiss Ameritech's application because of these defects, as well as other shortcomings detailed in ALTS's motion and in the MPSC's comments filed today showing that Ameritech has not completed three of the fourteen checklist items. Perhaps the most prominent example of Ameritech's checklist failures is its inability to provide adequate OSS support to Brooks for unbundled loops as required by the Commission in its Local Competition order of August 8, 1996, and in its Second Order on Reconsideration of December 13, 1996.

Ameritech contends it can comply with the OSS checklist requirement simply by implementing certain OSS interfaces it has unilaterally selected, and obtaining the testimony of outside witnesses that these interfaces "should work" without the benefit of any operational testing, or performance history. Based on this theory, Ameritech emphasizes the diligence with which it has implemented these various interfaces, and its efforts to keep them updated through its cyber-transom on the ACI web page.

ALTS respectfully submits that the OSS checklist item actually requires a mutual process that much more resembles commercial arrangements in which private parties interconnect their computer systems in order to permit the efficient and accurate flow of automated transactions. As explained in DOJ's "Oklahoma" Evaluation, as well as in decisions of the Wisconsin Public Service Commission and staff submissions in Illinois and other jurisdictions, there needs to be mutual understanding about the business goals involved, the particular technological tools to be employed, and an implementation schedule involving operational testing and concrete measures in order to confirm performance for all deliverables.[2] It is compliance with these performance measures that determines the ultimate success of such projects, not the manner in which particular information tools may be deployed in order to reach those measures.

Thus, it is Ameritech's obligation under the OSS checklist item to demonstrate through hard evidence based on mutual acceptable performance measures that it has complied with a CLEC's request for OSS interfaces. Ameritech admits that no such

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[2] Ameritech recently emphasized the importance of operational testing in defending its decisions to have ACI employees test its in-region long distance service (April 21, 1997, letter from Lynn Shapiro Starr to Regina M. Keeney at 2 (Attachment A)): ""Ameritech has developed twenty-seven operational systems that must all interface and interoperate together. These systems include ordering, provisioning, rating and billing systems -- systems which are the core of any business ... It must be exhaustively tested, tuned, and refined before Ameritech enters the long distance market. Customers will demand and are entitled to no less." (Emphasis supplied.)

evidence exists in the present application (see Brief at 34: "... the month-to-month results for certain performance measures reflect some volatility ...").[3]

It is true, of course, that requiring proof of operational performance could impose a larger burden than mere interface implementation. However, compliance with performance measurements is the only way to vindicate the ultimate goal of OSS compliance -- insuring that an end user's decision whether or not to take service from a CLEC is driven solely by factors within the CLEC's control, and not by the quality of an RBOC's provisioning of OSSs to the CLEC.

Based on Ameritech's failure to provision OSS to UNE-based CLECs and the other defects set forth in this motion, ALTS requests that Ameritech's application be denied.

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[3] See also Brooks Comments filed June 10, 1997, in this docket at 22: "Ameritech has filed false reports of its service order performance with the DOJ and the Commission showing significantly better service order performance statistics."

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MOTION TO DISMISS BY THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Pursuant to Rule 1.727(a) of the Commission's Rules of Practice, the Association for Local Telecommunications Services ("ALTS") hereby moves the Commission for an order dismissing Ameritech's Section 271 application for the state of Michigan because the application on its face shows Ameritech has not complied with the clear requirements of the statute.[4]

ARGUMENT

The Commission clearly has the authority to grant a motion to dismiss Ameritech's application for failure to state a facial claim of compliance with Section 271. There is no reason why commenters or the Commission should have to address the thousands of pages that make up Ameritech's application when it clearly fails to state a claim for

[4] Rule 1.727(a) addresses motions in the analogous context of formal complaint proceedings. The Commission has not issued rules of procedure applicable to Section 271 applications.

permission to enter in-region long distance service in Michigan.[5] While ALTS could not file its motion earlier, given the need to review much of this immense amount of material, it is manifest that Ameritech has failed to support its Section 271 application.

Perhaps the sharpest demonstration that ALTS is correct comes in today's comments from the MPSC. According to the MPSC, Ameritech has failed to meet three of the fourteen checklist items: OSS, shared transport for unbundled switching, and E911 (MPSC Comments at 19-38, 44, and 48). While the MPSC suggests in its accompanying press release that Ameritech may be able to achieve compliance on these items relatively quickly, such compliance will obviously require further review by the state, as well as a new Section 271 application to the Commission.

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[5] The Commission on numerous occasions has treated motions to dismiss as a fundamental procedural tool (see, e.g., In the Matter of International Telecharge, 11 FCC Rcd 10061, 10078 (1996) ("We conclude, therefore, that ITI has met its burden under Sections 1.271(a) and 1.728(a) of the Commission's rules. Accordingly, we deny the defendants' motions to dismiss the complaints"); In the Matter of Long Distance/USA, Inc., 7 FCC Rcd 408, 411 n. 42 (1992) ("Ameritech and Contel filed motions to stay discovery pending disposition of their motions to dismiss the complaints"); In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2637, 2734 n. 292 (1991) ("To address MCI's request for clarification, we would advise complainants that there is no purpose to their including invalid causes of action in a complaint, but if they do so dismissal of that cause of action will not automatically require dismissal of all other causes of actions in the same complaint").

I. AMERITECH HAS NOT IMPLEMENTED ALL ITEMS ON THE COMPETITIVE CHECKLIST.

In this section ALTS addresses four ways in which Ameritech fails to discharge the competitive checklist: its failure to provision OSS, its failure to provide unbundled switching, its reliance upon "most favored nations" clauses to "mix and match" multiple agreements in showing checklist compliance, and the lack of final prices in its interconnection agreements. ALTS does not concede the other checklist items not addressed in this motion necessarily comply with Section 271.

A. Ameritech Has Failed to Provide OSS to Either Resellers or Facilities-Based CLECs.

The RBOCs in general, and Ameritech in particular, contend that their obligations under Sections 251 and 271 of the 1996 Act to provide OSS functions to CLECs can be discharged through an RBOC's unilateral implementation of an OSS interface that has passed solely internal testing.[6] Consequently, Ameritech's application contains much ado about the particular interfaces selected by Ameritech as interfaces with the CLECs, and Ameritech's efforts to provision and internally test those interfaces according to industry standards (see, e.g., Brief at 21-30).

[6] See, e.g., the prepared statements of Beth Lawson of SWB, Mary Berube of SNET, and Elizabeth Ham of SWB presented May 28 and 29, 1997, at the CCB and OGC's OSS Forum.

1. Basic OSS Principles

Ameritech's basic assumptions about the nature of its OSS obligations are completely misdirected. When the Commission adopted OSS requirements in its Local Competition Order, and explained they are "critical" to the development of local competition, it was not acting out of an abstract desire to have computer systems speak to one another. Quite the contrary, this checklist item reflects the basic fact that new entrants need access to significant portions of incumbents' networks over the foreseeable future, and that new entrants must access those networks via efficient mechanisms that permit accurate, timely, and cost-effective servicing of CLEC customers.

Creation of options that encourage new entrants to make economically efficient choices is the overarching theme throughout every major aspect of the Commission's local competition initiatives -- its definition of interconnection and unbunded network elements, its selection of TELRIC costing principles, its rules for the calculation of resale discounts, etc. As the Commission explained concerning unbundled network elements in general: " ... these terms [in Section 251(c)(3)] require incumbent LECs to provide unbundled elements under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete" (Local Competition Order at ¶ 315).

Applying this policy to a new entrant's need to exchange

information with the ILECs in order to interact with ILEC networks, and thereby obtain and service CLEC end users, the Commission ordered strict OSS requirements. These provisions necessarily parallel the manner in which mechanized information exchanges are provisioned commercially, or provisioned internally by efficient companies. These practices are well understood in the information industry and in academic literature.

Accordingly, the Commission's OSS rules necessarily require mutual agreement between vendor and customer concerning the basic business goals to be accomplished through an automated information exchange, goals which should lead to mutual agreement concerning an evolution of timely, accurate, and cost-effective interfaces, accompanied by testing at each phase of development, and finally accepted only after operational testing.

2. The CCB-OGC OSS Forum and the LCI-CompTel Petition Reveal that the RBOCs Are Not Fulfilling Their OSS Obligations.

The Commission's OSS forum, and the petition for rulemaking filed May 30, 1997, by LCI and CompTel,[7] amply demonstrate that the RBOCs are not complying with this checklist item, and that conformance to the competitive model of OSS envisioned in the Local Competition Order can only be achieved through carefully crafted performance measures. Concerning Ameritech, LCI and CompTel detail numerous shortcomings in its provisioning to

[7] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, petition for expedited rulemaking filed May 30, 1997.

CLECs. For example:

- Ameritech acknowledges only one error in its return error messages regardless of how many errors are detected in an order (LCI-CompTel Petition at 35).

- Ameritech repeatedly fails to provide LCI with call record data on a timely basis (id. at 36).

- Specifications of Ameritech's proposed pre-ordering, ordering, and provisioning interfaces have been revised on numerous occasions (id. at 37).

- Ameritech systems create substantial risks of "double billing" (id. at 38).

According to LCI and CompTel, Ameritech admits that: (1) no CLEC uses an automated system to select due dates; (2) no CLEC appears to use automated systems to select telephone numbers; (3) only one CLEC uses an automated system to access ACSRs; and (4) no CLECs use automated systems to process maintenance and repair requests (id. at 48). In order to cure these defects, LCI and CompTel request that the Commission order each ILEC to disclose all OSS standards that exist (and to identify those which fail to exist), and to determine minimum OSS standards that will bring the ILECs into compliance with the Local Competition Order (id. at v).

Ameritech appears to anticipate LCI and CompTel's criticisms when it claims in its current application that CLECs seek "an impossibly high 'bug-free' standard that no information technologies system or application could ever meet" (Brief at 28; emphasis in original). Once again, Ameritech is confusing its particular technological tools with the basic business goals

those tools are supposed to advance.

ALTS largely agrees with Ameritech that "[m]ost of the problems that AT&T and the other carriers have identified are typical problems that users of information technologies systems and applications throughout the workforce encounter on an ongoing basis" (Brief at 27). Indeed, it is precisely because such problems are "ongoing" that ALTS, as well as the Department of Justice, have placed such emphasis on the "operational" testing of information systems. See Appendix A to DOJ's Oklahoma Evaluation at 85: " ... experts in software engineering suggest that internal testing alone, without inter-carrier testing, often fails to expose competitively-significant faults in the new and complex software used to create electronic interfaces and their interaction with OSSs."[8]

Contrary to Ameritech's suggestion, CLECs are not demanding an impossible perfection in implementing any particular technological tools, only that ILEC and CLECs mutually select and successfully implement those specific tools that, once fully

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[8] Ameritech eloquently explained the importance of operational testing of OSSs under a "peak load" environment recently in defending its extensive testing of in-region long distance service (April 21, 1997, letter from Lynn Starr Shapiro to Regina M Keeney at 3 (Attachment A)): "Ameritech plans to expand the Friendly User Trial to include additional Ameritech employees for a period of approximately ninety days. The expansion of the trial is based on the recommendation of an outside consultant who recommends that all of the systems be tested for a peak load of twenty thousand orders per day. Ameritech cannot reach these testing levels without the Friendly User expansion."

tested, can be expected to deliver a level of business performance that comports with the Commission's "meaningful opportunity to compete" standard.

3. The Experience of Brooks Fiber Demonstrates that Ameritech's OSS Performance Is Even More Deficient for UNE-Based CLECs than for Resellers.

While the reseller OSS experience that is the focus of the LCI-CompTel petition has plainly been unsatisfactory, the situation is even worse for CLECs that attempt to compete with Ameritech via unbundled network elements ("UNE-based CLECs"). While resellers have had little success obtaining parity of treatment as to existing OSS systems, UNE-based CLECs have not been able to reach consensus even on fundamental goals or basic approaches.

As detailed in Brooks' comments being filed today with the Commission, Ameritech's current system for handling unbundled loops is completely inadequate, and must be accompanied in a large majority of cases by a separate faxed order for number portability. According to Brooks, the systems are so unreliable that Brooks is currently forced to confirm several steps manually. Furthermore, contrary to Ameritech's contentions, Brooks' efforts to request access to Ameritech's OSS have gone largely unacknowledged by Ameritech.

The culmination of Ameritech's failure to provision OSS for UNE CLECs is its inability to supply Brooks with periodic performance data, or to account for immense discrepancies between

its cumulative results and Brooks' own experience. As Brooks explains: "Brooks Fiber and Ameritech have never agreed upon -- or even discussed -- standards for OSS performance.[9] Since no reliable data concerning Ameritech's performance yet exists, Ameritech cannot carry its burden of proof. As the MPSC states in its comments in this docket (at 26): "The primary problem in assessing Ameritech's compliance with the nondiscrimination standards of the Act and specifically the OSS functions is that, for the most part, sufficient performance standards do not exist by which Ameritech's performance can be judged."

Because the unbundled loop aspects of OSS are even more untried than the OSS aspects of resale discussed at length in the LCI-CompTel petition, some difficulty in agreeing upon and implementing adequate performance measures for unbundled loop OSS could be predicted, but not the level encountered by Brooks.

As demonstrated in Brooks' dealings with Ameritech and its comments here, Brooks has tried to implement stable and verifiable performance standards with Ameritech as to OSS support for unbundled loops, but those efforts are not completed, nor is Brooks at fault that they have not yet been completed. Given Ameritech's unmistakable failure to implement OSS, its application must be denied. Ameritech has no right to expect

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[9] Brooks Comments filed June 10, 1997, at 21. Brooks also states that Ameritech apparently declines to use the service order performance intervals set forth in its interconnection agreement for any purpose other than for planning.

ALTS's members to fast track its 271 application by using CLEC customers as "beta" tests for OSS interfaces.

B. Ameritech Has Not Met the Checklist Requirement for Unbundled Switching.

One of the requirements of the competitive checklist (Section 271(c)(2)(A)(vi)) is local switching unbundled from transport, local loop transmission, or other services. The Commission implemented the unbundled switching requirement in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, released August 8, 1996 ("Local Competition"). Ameritech admits it is not currently providing unbundled switching in Michigan, but contends that it still complies with the competitive checklist for this item under the standard announced by the Department of Justice in its "Oklahoma" evaluation (Brief at 19).

1. Ameritech Has Failed to Provide Unbundled Switching Even Under DOJ's Flawed Oklahoma Test.

The Department of Justice concluded in its evaluation of SBC's Section 271 application for Oklahoma that it is possible for RBOCs seeking Section 271 approval to discharge their competitive checklist obligation under Section 271(c)(2)(B) for certain checklist items without actual operational implementation (DOJ Evaluation at 22-23; ALTS disagrees with the Department's conclusion as discussed below in Part I.B.2). Ameritech expressly relies upon this interpretation by Department in its present application, claiming that it has complied with the

checklist obligation for unbundled switching: "by making available that item, through an approved interconnection agreement, to carriers that may elect to order it in the future" (Brief at 19), and citing DOJ's evaluation in support.

But the Department's position as to RBOC compliance for unrequested checklist items is not predicated on a mere offer to negotiate an item (DOJ Oklahoma Evaluation at 22-23):

> " ... we believe that, under some circumstances, a BOC may be 'providing' a checklist item under an agreement even though competitors are not actually using that item, at least where no competitor is actually requesting and experiencing difficulty obtaining that item. A BOC is providing an item, for purposes of checklist compliance, if the item is available both as a legal and practical matter, whether or not any competitors have chosen to use it. If a BOC has approved agreements that set forth compete prices and other terms and conditions for a checklist item, and if it demonstrates that it is willing and able promptly to satisfy requests for such quantities of the item as may reasonably be demanded by providers, at acceptable levels of quality, it still can satisfy the checklist requirement with respect to an item for which there is no present demand.

In support of its position, DOJ cited the Georgia PSC's decision in Docket No. 7253-U (id.) where the GPSC stated that (at 8):

> "Until BellSouth is actually able to provide interconnection, cost-based rates not subject to true-up, access to unbundled network elements, electronic interfaces for operation support systems, and the other items required under Section 251 and 252(d), approval of the Statement would offer no benefit to other carriers. Instead, approval of the Statement under these conditions would be misleading by stating that BellSouth 'generally offers' items that are not actually available." (Emphasis supplied.)

DOJ's position thus requires "complete prices and other terms and conditions" in order for RBOCs to comply with the checklist for unrequested items. But none of the agreements

cited by Ameritech as confirming its compliance with this checklist item contain such prices, terms or conditions. Contrary to the claims in Ameritech's brief, the AT&T agreement included with its application does not contain approved unbundled switching prices. Furthermore, while the Sprint agreement does contain such prices -- which are identical to the prices contained in Ameritech's SGAT -- the MPSC's order accepting the Sprint agreement expressly states that: " ... the pricing requirements of the federal act have not been applied at this time," citing to its pending final price docket, U-11280 (In the Matter of the Application of Sprint Communications Company, L.P., for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan, Case No. U-11203, released April 4, 1997 at 3).

While the MPSC's reluctance to give final price approval is a serious infirmity for a number of interconnection items (see Part I.D., below), it is particularly lethal as to an unprovisioned checklist item. If CLECs are not currently purchasing an item, they obviously lack any meaningful incentive to immediately resolve pricing disputes, and are willing instead to have ultimate resolution deferred to the permanent pricing docket. Given that no effective private incentives exist to assure that such prices comport with the 1996 Act, as well as the MPSC's disclaimer, DOJ's "Oklahoma" rule -- which requires approval -- plainly has no application to unbundled switching in Michigan.

The pending SGAT in front of the MPSC might have provided the pricing approval required by DOJ, but the MPSC's rejection of the SGAT in its SGAT Order[10] means that the current application fails even DOJ's theory as to how RBOCs can comply with unrequested checklist items.

2. DOJ's "Oklahoma" Theory Is Incorrect.

While Ameritech's offer of unbundled switching fails to qualify under DOJ's "Oklahoma" theory because it lacks approved prices, it is also manifest that DOJ's theory itself goes too far. Section 271(c)(2)(A)(i)(I) expressly states that Track A agreements only meet competitive checklist requirements if: "such company is providing access and interconnection ...." Ameritech simply ignores this language in its brief, and instead quotes the legislative history as asserting the checklist is a minimum standard "'assuming the other party or parties to that agreement have requested the items included in the checklist.' H.R. Rep. No. 104-458, 104th Cong. 2d Sess. 144 (1996)(emphasis added)" (Ameritech Brief at 21).

However, while the quote relied upon by Ameritech comes from the Conference Committee Report, it is not the Committee's discussion of its own provision, but rather only its description of the Senate Bill. In the portion of the legislative history

[10] In the Matter, on the Commission's Own Motion, to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Telecommunications Act of 1996, Case No. U-11104, released June 5, 1997, at 4.

describing the legislation actually passed, the Conference Committee clearly rejects Ameritech's stance: "The requirement that the BOC is 'providing access and interconnection' means that the competitor has implemented the interconnection request and the competitor is operational;" (H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 145 (1996); emphasis supplied). Thus, Track A compliance requires full, operational implementation for each checklist item, a requirement the Commission has no power to waive.[11]

The "operational" requirement for Track A checklist compliance is more than a technical subtlety. It provides a far more reliable means for validating checklist compliance than a mere "providing" or "available on order" provision could ever achieve (see the various contentions at the MPSC that some checklist items such as unbundled switching or OSS are not currently implemented because of inadequate definitions contained in the "offering," or because of uncertainty as to pricing, rather than an absence of any need for the item; e.g., Motion for Summary Disposition in MPSC Case No. U-11104 filed October 11, 1996, at 4 (included in Volume 4.1 of Ameritech's current application)).

Furthermore, there are yet other important implications

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[11] See Section 271(d)(4), entitled "LIMITATION ON COMMISSION": "The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."

here. Even if the Commission did have the power to allow Ameritech to substitute an offer to provide a checklist item for full implementation (a claim which is plainly incorrect for all the reasons given above), such a determination would have to be based on a comprehensive record which fully captured the current status of unbundled switching. Only in this manner could the Commission assure itself that the failure to request an item was not the result of RBOC manipulation or some transient factor, and thus be able to conclude that Congress (as well as the Commission, Ameritech, and virtually every other party to the recently completed Local Competition docket) had simply been wrong when they concluded that the actual provisioning of unbundled switching is necessary to the successful development of local competition.

Nowhere in the several thousand pages of its application does Ameritech attempt any such showing. Quite the contrary, Ameritech was enthusiastic in urging the Commission to require unbundled local switching just a year ago in the Local Competition proceeding (CC Docket No. 96-98, Ameritech Comments filed May 16, 1996, at 43):

> "Ameritech agrees that unbundled local switching can be included as a core network element. The legislative history of the 1996 Act cites local switching as an example of a network element, and item (vi) of the competitive checklist requires that BOCs offer "[l]ocal switching unbundled from transport, local loop transmission, or other services.' Ameritech submits that local switching thus satisfies the statutory test that defines the parameter of the section 251(c)(3) obligation." (Emphasis supplied.)

Ameritech admitted in its prior Michigan application that it could not explain the absence of unbundled switching implementation. See Affiant Dunny (at ¶ 89): "This may be the result of the ready availability of switching equipment or of a 'mix and match' entry strategy by new entrants to begin competing by combining unbundled network elements with the own switching equipment. In addition, new entrants may prefer to provide their own switching as a means of avoiding access charges by providing exchange access service to itself".

Ameritech's admission that the current self-provisioning of switches by competitors may be only a short run phenomenon that will end with access charge reform is important. It demonstrates that current non-implementation may be only a timing issue, and that unbundled switching may still prove to be an essential network element as envisioned by Congress in Section 271, and by the Commission and Ameritech in the Local Competition proceeding. Yet if Ameritech were to receive a waiver of its Track A implementation obligation as to unbundled switching, and thereby obtain Section 271 authority in Michigan, it would no longer have the same incentive to deliver on its "IOU" concerning unbundled switching once new entrants do need that item. The motivation and validation contemplated by Congress in requiring that Track A checklist implementation be "operational" will have been gutted for unbundled switching.

Furthermore, Ameritech's reliance here on the "available on

order" provisions in its current agreements to show Track A checklist compliance would fail to achieve even the modest effect of Track B, if that mechanism were being invoked by Ameritech. Under an SGAT (the "Statement of Generally Available Terms" mechanism used for Track B compliance) provisions would be available to all future new entrants. In the present application, the "available on order" mechanism could only be invoked by the signatory and those few other carriers that have "most favored nations" clauses in their agreements.

And if the Commission were to allow Ameritech to substitute promises for provisioning concerning unbundled switching, how would the Commission be prevent this process from ultimately embracing any of the other checklist elements? The incentives Section 271 was intended to present the RBOCs would quickly evaporate once the RBOCs were free to quit worrying about actually providing interconnection, and could simply lodge "IOUs" throughout their Section 251 agreements in order to receive their in-region long distance permission.

C. Ameritech Is Not Entitled to Rely on MFN Provisions to "Mix-and-Match" Interconnection Agreements In Trying to Show Checklist Compliance.

Ameritech should voluntarily agree to follow the Commission's Section 252(i) regulations if it wishes to "mix and match" various interconnection agreements to show compliance with